

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-220316

DATE: September 30, 1985

MATTER OF:

T. S. Head & Associates, Inc.

DIGEST:

1. When a protest is filed initially with the contracting agency, subsequent protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on the protest is untimely.
2. Protest regarding awardee's small business size status, untimely filed with the contracting officer (more than 5 days after bid opening), which results in awardee being found to be other than small is dismissed. Since size protest was untimely, Small Business Administration ruling is only prospective in nature and does not affect this procurement.

T. S. Head & Associates, Inc. (Head), protests the rejection of its bid as nonresponsive and the award of a contract to Stonhard, Inc., under invitation for bids (IFB) No. F09650-85-C0170, issued by the Department of the Air Force. Head's low bid was rejected as nonresponsive for failure to acknowledge a material amendment. Head contends that it never received the amendment and that its failure to acknowledge the amendment should be waived as a minor informality, since it would have no effect on its quoted price. Head also contends that Stonhard is not a small business and thus ineligible for award under this small business set-aside.

We dismiss the protest.

Head's protest regarding the rejection of its bid as nonresponsive was initially filed with the Air Force and denied in a letter dated August 28, 1985. We received Head's protest on September 20, 1985. Under our Bid Protest Regulations, once a protest has been timely filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester

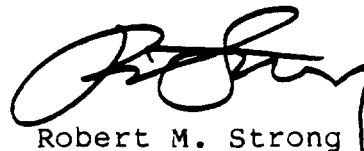
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receives actual or constructive notice of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1985). Although in its protest Head did not state when it received the agency's letter denying its protest, we generally estimate that it takes no more than 1 calendar week for regular mail to arrive. Technical Documentation, Inc., B-216306, Sept. 21, 1984, 84-2 C.P.D. ¶ 327. Since Head did not file its protest here within the 10-day period provided for under our Bid Protest Regulations, its protest on this issue is untimely and will not be considered. Computer Technology Associates, B-218350, Mar. 27, 1985, 85-1 C.P.D. ¶ 362.

Head's protest regarding the small business size status of Stonhard is also dismissed. In order to affect a specific solicitation, a protest concerning the small business representation of any offeror must be received by the contracting officer by the close of business of the 5th business day after bid opening. Federal Acquisition Regulation, 48 C.F.R. § 19.302(d)(1) (1984). Bid opening was August 2, 1985. Since Head did not protest to the Air Force until August 12, 1985, confirmed in writing on August 13, 1985, Head's size protest was untimely. However, the Air Force forwarded the protest to the Small Business Administration, which found Stonhard to be other than small. Since the size protest was untimely, the ruling is only prospective and does not affect the current solicitation.

While Head contends that the Air Force should act on the size determination since award was made to a large business, the procurement was properly conducted in accordance with the Federal Acquisition Regulation and is not objectionable.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel